

118TH CONGRESS  
2D SESSION

# H. R. 9533

To amend the Endangered Species Act of 1973 to optimize conservation through resource prioritization, incentivize wildlife conservation on private lands, provide for greater incentives to recover listed species, create greater transparency and accountability in recovering listed species, and limit reasonable and prudent measures.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2024

Mr. WESTERMAN (for himself, Mr. NEWHOUSE, Mr. BENTZ, Ms. HAGEMAN, Mr. GOSAR, Mr. STAUBER, Mr. TIFFANY, and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the Endangered Species Act of 1973 to optimize conservation through resource prioritization, incentivize wildlife conservation on private lands, provide for greater incentives to recover listed species, create greater transparency and accountability in recovering listed species, and limit reasonable and prudent measures.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “ESA Amendments Act of 2024”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Endangered Species Act of 1973 definitions.
- Sec. 3. Authorization of appropriations.
- Sec. 4. Rule of construction.

TITLE I—OPTIMIZING CONSERVATION THROUGH RESOURCE  
 PRIORITIZATION

- Sec. 101. Prioritization of listing petitions, reviews, and determinations.

TITLE II—INCENTIVIZING WILDLIFE CONSERVATION ON PRIVATE  
 LANDS

- Sec. 201. Candidate Conservation Agreements with Assurances.
- Sec. 202. Designation of critical habitat.

TITLE III—PROVIDING FOR GREATER INCENTIVES TO RECOVER  
 LISTED SPECIES

- Sec. 301. Protective regulations under Endangered Species Act of 1973.
- Sec. 302. 5-year review determinations.
- Sec. 303. Judicial review during monitoring period.
- Sec. 304. Codification of regulation.

TITLE IV—CREATING GREATER TRANSPARENCY AND  
 ACCOUNTABILITY IN RECOVERING LISTED SPECIES

- Sec. 401. Requirement to publish basis for listings on the internet.
- Sec. 402. Decisional transparency and use of State, Tribal, and local information.
- Sec. 403. Disclosure of expenditures under Endangered Species Act of 1973.
- Sec. 404. Award of litigation costs to prevailing parties in accordance with existing law.
- Sec. 405. Analysis of impacts and benefits of determination of endangered or threatened status.

TITLE V—LIMITATION ON REASONABLE AND PRUDENT  
 MEASURES

- Sec. 501. Limitation on reasonable and prudent measures.

3 **SEC. 2. ENDANGERED SPECIES ACT OF 1973 DEFINITIONS.**

4 (a) FORESEEABLE FUTURE.—The final rule titled  
 5 “Endangered and Threatened Wildlife and Plants; Regu-  
 6 lations for Listing Species and Designating Critical Habi-  
 7 tat” (84 Fed. Reg. 45020; published August 27, 2019)

1 shall have the force and effect of law with respect to the  
2 use of the term “foreseeable future”.

3 (b) HABITAT.—Section 3(5) of the Endangered Spe-  
4 cies Act of 1973 (16 U.S.C. 1532(5)) is amended by add-  
5 ing at the end the following:

6 “(D) For the purposes of designating critical  
7 habitat under this Act, the term ‘habitat’ means the  
8 abiotic and biotic setting that currently or periodi-  
9 cally contains the resources and conditions necessary  
10 to support 1 or more life processes of a species.”.

11 (c) ENVIRONMENTAL BASELINE.—Section 7(a) of  
12 the Endangered Species Act of 1973 (16 U.S.C. 1536(a))  
13 is amended by adding at the end the following:

14 “(5) For the purposes of carrying out a consultation  
15 under this section with respect to a threatened species or  
16 an endangered species, the term ‘environmental base-  
17 line’—

18 “(A) means the condition of the species or the  
19 critical habitat of the species in the action area,  
20 without the consequences to the species or the crit-  
21 ical habitat of the species caused by the proposed ac-  
22 tion; and

23 “(B) includes—

1           “(i) the past and present effects of all Fed-  
2 eral, State, and private actions and other  
3 human activities in the action area;

4           “(ii) the anticipated effects of each pro-  
5 posed Federal project within the action area for  
6 which a consultation under this section has  
7 been completed;

8           “(iii) the effects of State and private ac-  
9 tions that are contemporaneous with the con-  
10 sultation in process; and

11           “(iv) the ongoing impacts to listed species  
12 or designated critical habitat from existing fa-  
13 cilities or activities that are not caused by the  
14 proposed action or that are not within the dis-  
15 cretion of the Federal action agency to mod-  
16 ify.”.

17 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

18       Section 15 of the Endangered Species Act of 1973  
19 (16 U.S.C. 1542) is amended—

20           (1) in subsection (a)—

21               (A) by striking “subsection (b), (c), and  
22 (d)” and inserting “subsections (b) and (c)”;

23               (B) in paragraph (1)—

24                   (i) by striking “and” after “fiscal year  
25 1991,”; and

1 (ii) by inserting “, and \$302,025,000  
2 for each of fiscal years 2025 through  
3 2030” after “fiscal year 1992”;

4 (C) in paragraph (2)—

5 (i) by striking “and” after “fiscal  
6 years 1989 and 1990,”; and

7 (ii) by inserting “, and \$116,630,000  
8 for each of fiscal years 2025 through  
9 2030” after “fiscal years 1991 and 1992”;  
10 and

11 (D) in paragraph (3)—

12 (i) by striking “and” after “fiscal  
13 years 1989 and 1990,”; and

14 (ii) by inserting “and \$2,600,000 for  
15 each of fiscal years 2025 through 2030”  
16 after “fiscal years 1991 and 1992,”;

17 (2) in subsection (b), by inserting “and  
18 \$600,000 for each of fiscal years 2025 through  
19 2030” after “1992”; and

20 (3) in subsection (c)—

21 (A) by striking “and” after “fiscal years  
22 1988, 1989, and 1990,”; and

23 (B) by inserting “and \$9,900,000 for each  
24 of fiscal years 2025 through 2030,” after “fis-  
25 cal years 1991 and 1992,”.

1 **SEC. 4. RULE OF CONSTRUCTION.**

2 Nothing in this Act or the amendments made by this  
3 Act may be construed to enlarge or diminish the authority,  
4 jurisdiction, or responsibility of a State (as that term is  
5 defined in section 3 of the Endangered Species Act of  
6 1973 (16 U.S.C. 1532)) to manage, control, or regulate  
7 fish and wildlife on lands and waters, including Federal  
8 lands and waters, within the State.

9 **TITLE I—OPTIMIZING CON-**  
10 **SERVATION THROUGH RE-**  
11 **SOURCE PRIORITIZATION**

12 **SECTION 101. PRIORITIZATION OF LISTING PETITIONS, RE-**  
13 **VIEWS, AND DETERMINATIONS.**

14 (a) IN GENERAL.—Section 4 of the Endangered Spe-  
15 cies Act of 1973 (16 U.S.C. 1533) is amended by adding  
16 at the end the following:

17 “(j) NATIONAL LISTING WORK PLAN.—

18 “(1) IN GENERAL.—Not later than the date de-  
19 scribed in paragraph (2), the Secretary shall submit  
20 to Congress a national listing work plan that estab-  
21 lishes, for each covered species, a schedule for the  
22 completion during the 5-fiscal year period beginning  
23 on October 1 of the first fiscal year after the date  
24 of the submission of the work plan of—

25 “(A) findings as described in subsection  
26 (b)(3)(B) for each such covered species;

1           “(B) proposed and final determinations re-  
2           garding listing each such covered species under  
3           this section; and

4           “(C) proposed and final critical habitat  
5           designations under subsection (a)(3) relating to  
6           each such covered species.

7           “(2) SUBMISSION TO CONGRESS.—

8           “(A) IN GENERAL.—The Secretary shall  
9           submit to Congress—

10           “(i) together with the budget request  
11           of the Secretary for the first fiscal year  
12           that begins not less than 365 days after  
13           the date of the enactment of this sub-  
14           section, the initial work plan required  
15           under paragraph (1); and

16           “(ii) together with the budget request  
17           of the Secretary for each fiscal year there-  
18           after, an updated work plan under para-  
19           graph (1).

20           “(B) ADDITIONAL INCLUSIONS.—The Sec-  
21           retary shall include with each budget request  
22           referred to in subparagraph (A) a description of  
23           the amounts to be requested to carry out the  
24           work plan for the fiscal year covered by the  
25           budget request, including any amounts re-

1            requested to address emergency listings if the  
2            Secretary identifies any emergency posing a sig-  
3            nificant risk to the well-being of any species of  
4            fish or wildlife or plant.

5            “(3) PRIORITY.—

6                    “(A) IN GENERAL.—In developing a work  
7            plan under this subsection, the Secretary shall  
8            assign to each species included in the work plan  
9            a priority classification of Priority 1 through  
10           Priority 5, such that, as determined by the Sec-  
11           retary, the following apply:

12                    “(i) Priority 1 represents species of  
13            the highest priority, to be designated as  
14            critically imperiled and in need of imme-  
15            diate action.

16                    “(ii) Priority 2 represents species with  
17            respect to which the best scientific and  
18            commercial data available support a clear  
19            decision regarding the status of the spe-  
20            cies.

21                    “(iii) Priority 3 represents species  
22            with respect to which studies regarding the  
23            status of the species are being carried  
24            out—



1           “(I) to answer key questions that  
2           may influence the findings of a peti-  
3           tion to list the species submitted  
4           under subsection (b)(3); and

5           “(II) to resolve any uncertainty  
6           regarding the status of the species  
7           within a reasonable timeframe.

8           “(iv) Priority 4 represents species for  
9           which proactive conservation efforts likely  
10          to reduce threats to the species are being  
11          developed or carried out, within a reason-  
12          able timeframe and in an organized man-  
13          ner, by Federal agencies, States, land-  
14          owners, or other stakeholders.

15          “(v) Priority 5 represents species—

16               “(I) for which there exists little  
17               information regarding—

18                       “(aa) threats to the species;

19                       or

20                       “(bb) the status of the spe-  
21                       cies; or

22               “(II) that would receive limited  
23               conservation benefit in the foreseeable  
24               future by listing the species as a

1 threatened species or endangered spe-  
2 cies under this section.

3 “(B) USE OF METHODOLOGY.—The Sec-  
4 retary shall establish and assign priority classi-  
5 fications under subparagraph (A) in accordance  
6 with the notice of the Director of the United  
7 States Fish and Wildlife Service titled ‘Method-  
8 ology for Prioritizing Status Reviews and Ac-  
9 companying 12-Month Findings on Petitions  
10 for Listing Under the Endangered Species Act’  
11 (81 Fed. Reg. 49248; published July 27, 2016).

12 “(C) EXTENSIONS FOR CERTAIN PRIORITY  
13 CLASSIFICATIONS.—

14 “(i) PRIORITY 3.—With respect to a  
15 species classified as Priority 3 under sub-  
16 paragraph (A)(iii), if the Secretary deter-  
17 mines that additional time would allow for  
18 more complete data collection or the com-  
19 pletion of studies relating to the species,  
20 the Secretary may retain the species under  
21 the work plan for a period of not more  
22 than 5 years after the deadline under para-  
23 graph (4).

24 “(ii) PRIORITY 4.—With respect to a  
25 species classified as Priority 4 under sub-

1 paragraph (A)(iv), if the Secretary deter-  
2 mines that existing conservation efforts  
3 continue to meet the conservation needs of  
4 the species, the Secretary may retain the  
5 species under the work plan for a period of  
6 not more than 5 years after the deadline  
7 under paragraph (4).

8 “(iii) PRIORITY 5.—With respect to a  
9 species classified as Priority 5 under sub-  
10 paragraph (A)(v), the Secretary may retain  
11 the species under the work plan for a pe-  
12 riod of not more than 5 years after the  
13 deadline under paragraph (4).

14 “(D) REVISION OF PRIORITY CLASSIFICA-  
15 TION.—The Secretary may revise, in accordance  
16 with subparagraph (A), the assignment to a pri-  
17 ority classification of a species included in a  
18 work plan at any time during the fiscal years  
19 to which the work plan applies.

20 “(E) EFFECT OF PRIORITY CLASSIFICA-  
21 TION.—The assignment of a priority classifica-  
22 tion to a species included in a work plan is not  
23 a final agency action.

24 “(4) DEADLINE.—The Secretary shall act on  
25 any petition to add a species to a list published

1 under subsection (c) submitted under subsection  
2 (b)(3) not later than the last day of the fiscal year  
3 specified for that petition in the most recent work  
4 plan.

5 “(5) REGULATIONS.—The Secretary may issue  
6 such regulations as the Secretary determines appro-  
7 priate to carry out this subsection.

8 “(6) EFFECT OF SUBSECTION.—Nothing in this  
9 subsection may be construed to preclude or other-  
10 wise affect the emergency listing authority of the  
11 Secretary under subsection (b)(7).

12 “(7) DEFINITIONS.—In this subsection:

13 “(A) COVERED SPECIES.—The term ‘cov-  
14 ered species’ means a species that is not in-  
15 cluded on a list published under subsection  
16 (c)—

17 “(i) for which a petition to add the  
18 species to such a list has been submitted  
19 under subsection (b)(3); or

20 “(ii) that is otherwise under consider-  
21 ation by the Secretary for addition to such  
22 a list.

23 “(B) WORK PLAN.—The term ‘work plan’  
24 means the national listing work plan submitted  
25 by the Secretary under paragraph (1).”.

1 (b) CONFORMING AMENDMENTS.—Section 4(b)(3) of  
2 the Endangered Species Act of 1973 (16 U.S.C.  
3 1533(b)(3)) is amended—

4 (1) in subparagraph (B), by striking “Within  
5 12 months” and inserting “In accordance with the  
6 national listing work plan submitted under sub-  
7 section (j),”; and

8 (2) in subparagraph (C), to read as follows:

9 “(C) JUDICIAL REVIEW.—Any negative finding  
10 described in subparagraph (A) and any finding de-  
11 scribed in subparagraph (B)(i)(I) shall be subject to  
12 judicial review.”.

13 **TITLE II—INCENTIVIZING WILD-**  
14 **LIFE CONSERVATION ON PRI-**  
15 **VATE LANDS**

16 **SECTION 201. CANDIDATE CONSERVATION AGREEMENTS**  
17 **WITH ASSURANCES.**

18 (a) LISTING DETERMINATIONS.—Section 4(b)(1) of  
19 the Endangered Species Act of 1973 (16 U.S.C.  
20 1533(b)(1)) is amended by adding at the end the fol-  
21 lowing:

22 “(C) CANDIDATE CONSERVATION AGREEMENTS  
23 WITH ASSURANCES.—In making a determination  
24 under subsection (a)(1) with respect to a species, the  
25 Secretary shall take into account and document the

1 effect of any net conservation benefit (as that term  
2 is defined in subsection (k) of section 10) of any  
3 Candidate Conservation Agreement with Assurances  
4 or any programmatic Candidate Conservation Agree-  
5 ment with Assurances (as those terms are defined in  
6 that subsection) relating to such species.”.

7 (b) CANDIDATE CONSERVATION AGREEMENTS WITH  
8 ASSURANCES.—Section 10 of the Endangered Species Act  
9 of 1973 (16 U.S.C. 1539) is amended by adding at the  
10 end the following:

11 “(k) CANDIDATE CONSERVATION AGREEMENTS  
12 WITH ASSURANCES.—

13 “(1) PROPOSED AGREEMENT.—A covered party  
14 may submit a proposed Agreement to the Secretary.

15 “(2) APPROVAL.—Not later than 120 days  
16 after the date of the receipt of a proposed Agree-  
17 ment under paragraph (1), the Secretary shall ap-  
18 prove the proposed Agreement if the Secretary de-  
19 termines that the proposed Agreement—

20 “(A) sets forth specific management activi-  
21 ties that the covered party will undertake to  
22 conserve the covered species;

23 “(B) provides a positive estimate of the net  
24 conservation benefit of such management activi-  
25 ties to the covered species;

1           “(C) describes, to the maximum extent  
2 practicable, the existing population levels of the  
3 covered species or the existing quality of habi-  
4 tat;

5           “(D) includes a monitoring plan to be car-  
6 ried out by the parties to the Agreement; and

7           “(E) provides assurances to the covered  
8 party that no additional conservation measures  
9 will be required and additional land, water, or  
10 resource use restrictions will not be imposed on  
11 the covered party if the covered species becomes  
12 listed after the effective date of such Agree-  
13 ment.

14           “(3) DENIAL.—Not later than 120 days after  
15 the date of the receipt of a proposed Agreement  
16 under paragraph (1), the Secretary shall—

17           “(A) deny the proposed Agreement if the  
18 Secretary determines that the proposed Agree-  
19 ment does not meet the requirements described  
20 in paragraph (2); and

21           “(B) provide the submitting covered party  
22 a written explanation for such determination  
23 and the adjustments required for the Secretary  
24 to approve such proposed Agreement.

1           “(4) PROGRAMMATIC CANDIDATE CONSERVA-  
2           TION AGREEMENT WITH ASSURANCES.—

3           “(A) IN GENERAL.—The Secretary may  
4           enter into a Candidate Conservation Agreement  
5           with Assurances with a covered party that au-  
6           thorizes such covered party—

7                   “(i) to administer such Candidate  
8                   Conservation Agreement with Assurances;

9                   “(ii) to hold any permit issued under  
10                  this section with regard to such Candidate  
11                  Conservation Agreement with Assurances;

12                  “(iii) to enroll other covered parties  
13                  within the area covered by such Candidate  
14                  Conservation Agreement with Assurances  
15                  in such Candidate Conservation Agreement  
16                  with Assurances; and

17                  “(iv) to convey any permit authoriza-  
18                  tion held by such covered party under  
19                  clause (ii) to each covered party enrolled  
20                  under clause (iii).

21           “(B) PUBLICATION.—Upon receipt of a  
22           proposed programmatic Candidate Conservation  
23           Agreement with Assurances under paragraph  
24           (1) and before approving or denying such a pro-  
25           posed programmatic Candidate Conservation



1 Agreement with Assurances under paragraph  
2 (2) or (3), respectively, the Secretary shall—

3 “(i) not later than 30 days after the  
4 date of such receipt, publish the proposed  
5 programmatic Candidate Conservation  
6 Agreement with Assurances in the Federal  
7 Register for public comment for a period  
8 of not less than 60 days;

9 “(ii) review any comments received  
10 under clause (i); and

11 “(iii) after the close of the public com-  
12 ment period for the proposed pro-  
13 grammatic Candidate Conservation Agree-  
14 ment with Assurances, publish in the Fed-  
15 eral Register—

16 “(I) any comments received  
17 under clause (i); and

18 “(II) the approval or denial of  
19 the proposed programmatic Candidate  
20 Conservation Agreement with Assur-  
21 ances under paragraph (2) or (3), re-  
22 spectively.

23 “(5) INCIDENTAL TAKE AUTHORIZATION.—If a  
24 covered species is listed under section 4, the Sec-  
25 retary shall issue a permit to the relevant covered

1 party under this section allowing incidental take of  
2 and modification to the habitat of such covered spe-  
3 cies consistent with the Agreement.

4 “(6) TECHNICAL ASSISTANCE.—The Secretary  
5 shall, upon request, provide a covered party with  
6 technical assistance in developing a proposed Agree-  
7 ment.

8 “(7) APPLICABILITY TO FEDERAL LAND.—An  
9 Agreement may apply to a covered party that con-  
10 ducts activities on land administered by any Federal  
11 agency pursuant to a permit or lease issued to the  
12 covered party by that Federal agency.

13 “(8) EXEMPTION FROM CONSULTATION RE-  
14 QUIREMENT.—An Agreement approved under this  
15 subsection shall be deemed to have been granted an  
16 exemption under section 7(h) for the purposes of  
17 that section.

18 “(9) EXEMPTION FROM DISCLOSURE.—Infor-  
19 mation submitted by a private party to the Secretary  
20 under this subsection shall be exempt from disclo-  
21 sure under section 552(b)(3)(B) of title 5, United  
22 States Code.

23 “(10) DEFINITIONS.—In this subsection:

24 “(A) AGREEMENT.—The term ‘Agreement’  
25 means—

1           “(i) a Candidate Conservation Agree-  
2           ment with Assurances; or

3           “(ii) a programmatic Candidate Con-  
4           servation Agreement with Assurances.

5           “(B) CANDIDATE CONSERVATION AGREE-  
6           MENT WITH ASSURANCES.—The term ‘Can-  
7           didate Conservation Agreement with Assur-  
8           ances’ means any voluntary agreement, includ-  
9           ing a conservation benefit agreement, between  
10          the Secretary and a covered party in which—

11           “(i) the covered party commits to im-  
12           plementing mutually agreed upon conserva-  
13           tion measures for a candidate species; and

14           “(ii) the Secretary provides assur-  
15           ances that, if such candidate species is list-  
16           ed pursuant to section 4—

17           “(I) the covered party shall incur  
18           no additional obligations beyond ac-  
19           tions agreed to in the agreement with  
20           respect to conservation activities re-  
21           quired under this Act; and

22           “(II) no additional land, water,  
23           or resource use restrictions shall be  
24           imposed on the covered party beyond  
25           those included in the agreement.

1           “(C) CANDIDATE SPECIES.—The term  
2 ‘candidate species’ means a species—

3           “(i) designated by the Secretary as a  
4 candidate species under this Act; or

5           “(ii) proposed to be listed pursuant to  
6 section 4.

7           “(D) COVERED PARTY.—The term ‘covered  
8 party’ means a—

9           “(i) party that conducts activities on  
10 land administered by a Federal agency  
11 pursuant to a permit or lease issued to the  
12 party;

13           “(ii) private property owner;

14           “(iii) county;

15           “(iv) State or State agency; or

16           “(v) Tribal government.

17           “(E) COVERED SPECIES.—The term ‘cov-  
18 ered species’ means, with respect to an Agree-  
19 ment, the species that is the subject of such  
20 Agreement.

21           “(F) NET CONSERVATION BENEFIT.—The  
22 term ‘net conservation benefit’ means the net  
23 effect of an Agreement, determined by com-  
24 paring the existing situation of the candidate  
25 species without the Agreement in effect and a

1 situation in which the Agreement is in effect,  
2 on a candidate species, including—

3 “(i) the net effect on threats to such  
4 species;

5 “(ii) the net effect on the number of  
6 individuals of such species; or

7 “(iii) the net effect on the habitat of  
8 such species.

9 “(G) PROGRAMMATIC CANDIDATE CON-  
10 SERVATION AGREEMENT WITH ASSURANCES.—  
11 The term ‘programmatic Candidate Conserva-  
12 tion Agreement with Assurances’ means a Can-  
13 didate Conservation Agreement with Assurances  
14 described in paragraph (4)(A).”.

15 **SEC. 202. DESIGNATION OF CRITICAL HABITAT.**

16 (a) PRIVATELY OWNED OR CONTROLLED LAND.—  
17 Section 4(a)(3) of the Endangered Species Act of 1973  
18 (16 U.S.C. 1533(a)(3)) is amended by adding at the end  
19 the following:

20 “(C) PRIVATELY OWNED OR CONTROLLED  
21 LAND.—The Secretary may not designate as critical  
22 habitat under subparagraph (A) any privately owned  
23 or controlled land or other geographical area that is  
24 subject to a land management plan that—

1           “(i) the Secretary determines is similar in  
2 nature to an integrated natural resources man-  
3 agement plan described in section 101 of the  
4 Sikes Act (16 U.S.C. 670a);

5           “(ii)(I) is prepared in cooperation with the  
6 Secretary and the head of each applicable State  
7 fish and wildlife agency of each State in which  
8 such land or other geographical area is located;  
9 or

10           “(II) is submitted to the Secretary in  
11 a manner that is similar to the manner in  
12 which an applicant submits a conservation  
13 plan to the Secretary under section  
14 10(a)(2)(A);

15           “(iii) includes an activity or a limitation on  
16 an activity that the Secretary determines will  
17 likely conserve the species concerned;

18           “(iv) the Secretary determines will result  
19 in—

20           “(I) an increase in the population of  
21 the species concerned above the population  
22 of such species on the date that such spe-  
23 cies is listed as a threatened species or an  
24 endangered species; or

1                   “(II) maintaining the same population  
2                   of such species on the land or other geo-  
3                   graphical area as the population that  
4                   would likely occur if such land or other  
5                   geographical area is designated as critical  
6                   habitat; and

7                   “(v) to the maximum extent practicable,  
8                   will minimize and mitigate the impacts of any  
9                   activity that will likely result in an incidental  
10                  taking of the species concerned.”.

11           (b)    DESIGNATION    CONSIDERATIONS.—Section  
12 4(b)(2) of the Endangered Species Act of 1973 (16 U.S.C.  
13 1533(b)(2)) is amended in the first sentence by inserting  
14 “the impact on existing efforts of private landowners to  
15 conserve the species,” after “impact on national secu-  
16 rity,”.

17 **TITLE        III—PROVIDING        FOR**  
18 **GREATER INCENTIVES TO RE-**  
19 **COVER LISTED SPECIES**

20 **SEC. 301. PROTECTIVE REGULATIONS UNDER ENDAN-**  
21 **GERED SPECIES ACT OF 1973.**

22           (a) AMENDMENT TO DEFINITION.—Section 3(3) of  
23 the Endangered Species Act of 1973 (16 U.S.C. 1532(3))  
24 is amended by striking “and transplantation, and, in the  
25 extraordinary case where population pressures within a

1 given ecosystem cannot be otherwise relieved, may in-  
2 clude” and inserting “transplantation, and, at the discre-  
3 tion of the Secretary,”.

4 (b) PROTECTIVE REGULATIONS.—Section 4 of the  
5 Endangered Species Act of 1973 (16 U.S.C. 1533) is  
6 amended—

7 (1) in subsection (d), to read as follows:

8 “(d) PROTECTIVE REGULATIONS.—

9 “(1) IN GENERAL.—Whenever any species  
10 is listed as a threatened species pursuant to  
11 subsection (e), the Secretary shall issue such  
12 regulations as are necessary and advisable to  
13 provide for the conservation of that species.

14 “(2) RECOVERY GOALS.—If the Secretary  
15 issues a regulation under paragraph (1) that  
16 prohibits an act described in section 9(a), the  
17 Secretary shall, with respect to the species that  
18 is the subject of such regulation—

19 “(A) establish objective, incremental  
20 recovery goals;

21 “(B) provide for the stringency of  
22 such regulation to decrease as such recov-  
23 ery goals are met; and

24 “(C) provide for State management  
25 within such State, if such State is willing



1 to take on such management, beginning on  
2 the date on which the Secretary determines  
3 all such recovery goals are met and, if such  
4 recovery goals remain met, continuing until  
5 such species is removed from the list of  
6 threatened species published pursuant to  
7 subsection (c).

8 “(3) COOPERATIVE AGREEMENT.—A regu-  
9 lation issued under paragraph (1) that prohibits  
10 an act described in section 9(a)(1) with respect  
11 to a resident species shall apply with respect to  
12 a State that has entered into a cooperative  
13 agreement with the Secretary pursuant to sec-  
14 tion 6(c) only to the extent that such regulation  
15 is adopted by such State.

16 “(4) STATE RECOVERY STRATEGY.—

17 “(A) IN GENERAL.—A State may de-  
18 velop a recovery strategy for a threatened  
19 species or a candidate species and submit  
20 to the Secretary a petition for the Sec-  
21 retary to use such recovery strategy as the  
22 basis for any regulation issued under para-  
23 graph (1) with respect to such species  
24 within such State.

1           “(B) APPROVAL OR DENIAL OF PETI-  
2           TION.—Not later than 120 days after the  
3           date on which the Secretary receives a pe-  
4           tition submitted under subparagraph (A),  
5           the Secretary shall—

6                   “(i) approve such petition if the  
7                   recovery strategy is reasonably certain  
8                   to be implemented by the petitioning  
9                   State and to be effective in conserving  
10                  the species that is the subject of such  
11                  recovery strategy; or

12                  “(ii) deny such petition if the re-  
13                  quirements described in clause (i) are  
14                  not met.

15           “(C) PUBLICATION.—Not later than  
16           30 days after the date on which the Sec-  
17           retary approves or denies a petition under  
18           subparagraph (B), the Secretary shall pub-  
19           lish such approval or denial in the Federal  
20           Register.

21           “(D) DENIAL OF PETITION.—

22                   “(i) WRITTEN EXPLANATION.—If  
23                   the Secretary denies a petition under  
24                   subparagraph (B), the Secretary shall  
25                   include in such denial a written expla-

1 nation for such denial, including a de-  
2 scription of the changes to such peti-  
3 tion that are necessary for the Sec-  
4 retary to approve such petition.

5 “(ii) RESUBMISSION OF DENIED  
6 PETITION.—A State may resubmit a  
7 petition that is denied under subpara-  
8 graph (B).

9 “(E) USE IN PROTECTIVE REGULA-  
10 TIONS.—If the Secretary approves a peti-  
11 tion under subparagraph (B), the Sec-  
12 retary shall—

13 “(i) issue a regulation under  
14 paragraph (1) that adopts the recov-  
15 ery strategy as such regulation with  
16 respect to the species that is the sub-  
17 ject of such recovery strategy within  
18 the petitioning State; and

19 “(ii) establish objective criteria to  
20 evaluate the effectiveness of such re-  
21 covery strategy in conserving such  
22 species within such State.

23 “(F) REVISION.—If a recovery strat-  
24 egy that is adopted as a regulation issued  
25 under paragraph (1) is determined by the

1 Secretary to be ineffective in conserving  
2 the species that is the subject of such re-  
3 covery strategy in accordance with the ob-  
4 jective criteria established under subpara-  
5 graph (E)(ii) for such recovery strategy,  
6 the Secretary shall revise such regulation  
7 and reissue such regulation in accordance  
8 with paragraph (1).”; and  
9 (2) in subsection (f)(1)(B)—  
10 (A) in clause (ii), by striking “and” at the  
11 end;  
12 (B) in clause (iii), by striking the period at  
13 the end and inserting “; and”; and  
14 (C) by adding at the end the following:  
15 “(iv) with respect to an endangered spe-  
16 cies, objective, incremental recovery goals in ac-  
17 cordance with subsection (d)(2)(A) for use  
18 under that subsection if such endangered spe-  
19 cies is changed in status from an endangered  
20 species to a threatened species under subsection  
21 (c)(2)(B)(ii).”.

22 **SEC. 302. 5-YEAR REVIEW DETERMINATIONS.**

23 Section 4(c) of the Endangered Species Act of 1973  
24 (16 U.S.C. 1533(c)) is amended by adding at the end the  
25 following:

1           “(3) Not later than 30 days after the date on  
2           which the Secretary makes a determination under  
3           paragraph (2)(B), the Secretary shall initiate a rule-  
4           making to carry out such determination.”.

5 **SEC. 303. JUDICIAL REVIEW DURING MONITORING PERIOD.**

6           Section 4(g) of the Endangered Species Act of 1973  
7 (16 U.S.C. 1533(g)) is amended by adding at the end the  
8 following:

9           “(3) The removal of a species from a list pub-  
10          lished under subsection (c)(1) is not subject to judi-  
11          cial review during the period established under para-  
12          graph (1) with respect to the species.”.

13 **SEC. 304. CODIFICATION OF REGULATION.**

14          The final rule titled “Endangered and Threatened  
15 Wildlife and Plants; Regulations for Prohibitions to  
16 Threatened Wildlife and Plants” (84 Fed. Reg. 44753;  
17 published August 27, 2019) shall have the force and effect  
18 of law.

1 **TITLE IV—CREATING GREATER**  
2 **TRANSPARENCY AND AC-**  
3 **COUNTABILITY IN RECOV-**  
4 **ERING LISTED SPECIES**

5 **SECTION 401. REQUIREMENT TO PUBLISH BASIS FOR LIST-**  
6 **INGS ON THE INTERNET.**

7 Section 4(b) of the Endangered Species Act of 1973  
8 (16 U.S.C. 1533(b)) is amended by adding at the end the  
9 following:

10 “(9) The Secretary shall make publicly available on  
11 the internet the best scientific and commercial data avail-  
12 able that are used as the basis for each regulation, includ-  
13 ing each proposed regulation, promulgated under sub-  
14 section (a)(1), except that—

15 “(A) at the request of a Governor, State agen-  
16 cy, or legislature of a State, the Secretary may not  
17 make such data available under this paragraph if  
18 such entity determines that public disclosure of such  
19 data is prohibited by a law or regulation of such  
20 State, including any law or regulation requiring the  
21 protection of personal information; and

22 “(B) not later than 30 days after the date of  
23 the enactment of this paragraph, the Secretary shall  
24 execute an agreement with the Secretary of Defense  
25 that prevents the disclosure of classified information

1       pertaining to Department of Defense personnel, fa-  
2       cilities, lands, or waters.”.

3   **SEC. 402. DECISIONAL TRANSPARENCY AND USE OF STATE,**  
4                   **TRIBAL, AND LOCAL INFORMATION.**

5       (a) **REQUIRING DECISIONAL TRANSPARENCY WITH**  
6   **AFFECTED STATES.**—Section 6(a) of the Endangered  
7   Species Act of 1973 (16 U.S.C. 1535(a)) is amended—

8           (1) by inserting “(1)” before the first sentence;  
9       and

10          (2) by striking “Such cooperation shall include”  
11       and inserting the following:

12           “(2) Such cooperation shall include—

13                   “(A) before making a determination under  
14                   section 4(a), providing to States affected by  
15                   such determination all data that is the basis of  
16                   the determination; and

17                   “(B)”.

18       (b) **ENSURING USE OF STATE, TRIBAL, AND LOCAL**  
19   **INFORMATION.**—

20           (1) **IN GENERAL.**—Section 3 of the Endangered  
21   Species Act of 1973 (16 U.S.C. 1532) is amended—

22                   (A) by redesignating paragraphs (2)  
23                   through (21) as paragraphs (3) through (22),  
24                   respectively; and

1 (B) by inserting after paragraph (1) the  
2 following:

3 “(2) The term ‘best scientific and commercial data  
4 available’ includes data submitted to the Secretary by a  
5 State, Tribal, or county government.”.

6 (2) CONFORMING AMENDMENT.—Section 7(n)  
7 of the Endangered Species Act of 1973 (16 U.S.C.  
8 1536(n)) is amended by striking “section 3(13)”  
9 and inserting “section 3(14)”.

10 **SEC. 403. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**  
11 **GERED SPECIES ACT OF 1973.**

12 (a) REQUIREMENT TO DISCLOSE.—Section 13 of the  
13 Endangered Species Act of 1973 (87 Stat. 902) is amend-  
14 ed to read as follows:

15 **“SEC. 13. DISCLOSURE OF EXPENDITURES.**

16 “(a) REQUIREMENT.—The Secretary of the Interior,  
17 in consultation with the Secretary of Commerce, shall—

18 “(1) not later than 90 days after the end of  
19 each fiscal year, submit to the Committee on Nat-  
20 ural Resources of the House of Representatives and  
21 the Committee on Environment and Public Works of  
22 the Senate an annual report detailing Federal Gov-  
23 ernment expenditures for covered suits during the  
24 preceding fiscal year (including the information de-  
25 scribed in subsection (b)); and



1           “(2) make publicly available through the Inter-  
2 net a searchable database, updated monthly, of the  
3 information described in subsection (b).

4           “(b) INCLUDED INFORMATION.—The report shall in-  
5 clude—

6           “(1) the case name and number of each covered  
7 suit, and, with respect to each such covered suit, a  
8 hyperlink to each settlement decision, final decision,  
9 consent decree, stipulation of dismissal, release, in-  
10 terim decision, motion to dismiss, partial motion for  
11 summary judgement, or related final document;

12           “(2) a description of each claim or cause of ac-  
13 tion in each covered suit;

14           “(3) the name of each covered agency the ac-  
15 tions of which give rise to any claim in a covered  
16 suit and each plaintiff in such suit;

17           “(4) funds expended by each covered agency  
18 (disaggregated by agency account) to receive and re-  
19 spond to notices referred to in section 11(g)(2) or to  
20 prepare for litigation of, litigate, negotiate a settle-  
21 ment agreement or consent decree in, or provide ma-  
22 terial, technical, or other assistance in relation to, a  
23 covered suit;

1           “(5) the number of full-time equivalent employ-  
2           ees that participated in the activities described in  
3           paragraph (4);

4           “(6) any information required to be published  
5           under section 1304 of title 31, United States Code,  
6           with respect to a covered suit; and

7           “(7) attorneys fees and other expenses  
8           (disaggregated by agency account) awarded in cov-  
9           ered suits, including any consent decrees or settle-  
10          ment agreements (regardless of whether a decree or  
11          settlement agreement is sealed or otherwise subject  
12          to nondisclosure provisions), including the bases for  
13          such awards.

14          “(c) REQUIREMENT TO PROVIDE INFORMATION.—  
15          The head of each covered agency shall provide to the Sec-  
16          retary in a timely manner all information requested by the  
17          Secretary to comply with the requirements of this section.

18          “(d) LIMITATION ON DISCLOSURE.—Notwith-  
19          standing any other provision of this section, this section  
20          shall not affect any restriction in a consent decree or set-  
21          tlement agreement on the disclosure of information that  
22          is not described in subsection (b).

23          “(e) DEFINITIONS.—In this section:

24                  “(1) COVERED AGENCY.—The term ‘covered  
25                  agency’ means any agency of the—

- 1           “(A) Department of the Interior;  
2           “(B) Forest Service;  
3           “(C) Environmental Protection Agency;  
4           “(D) National Marine Fisheries Service;  
5           “(E) Bonneville Power Administration;  
6           “(F) Western Area Power Administration;  
7           “(G) Southwestern Power Administration;  
8           or  
9           “(H) Southeastern Power Administration.

10           “(2) COVERED SUIT.—The term ‘covered suit’  
11           means—

12                   “(A) any civil action containing any claim  
13                   arising under this Act against the Federal Gov-  
14                   ernment and based on the action of a covered  
15                   agency; and

16                   “(B) any administrative proceeding under  
17                   which the United States awards fees and other  
18                   expenses to a third party under section 504 of  
19                   title 5, United States Code.”.

20           (b) CLERICAL AMENDMENT.—The table of contents  
21           in the first section of the Endangered Species Act of 1973  
22           (16 U.S.C. 1531 note) is amended by striking the item  
23           relating to section 13 and inserting the following:

          “Sec. 13. Disclosure of expenditures.”.

1 **SEC. 404. AWARD OF LITIGATION COSTS TO PREVAILING**  
2 **PARTIES IN ACCORDANCE WITH EXISTING**  
3 **LAW.**

4 Section 11(g)(4) of the Endangered Species Act of  
5 1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to  
6 any party, whenever the court determines such award is  
7 appropriate” and inserting “in accordance with section  
8 2412 of title 28, United States Code and section 504 of  
9 title 5, United States Code.”.

10 **SEC. 405. ANALYSIS OF IMPACTS AND BENEFITS OF DETER-**  
11 **MINATION OF ENDANGERED OR THREAT-**  
12 **ENED STATUS.**

13 Section 4(a) of the Endangered Species Act of 1973  
14 (16 U.S.C. 1533(a)) is amended by adding at the end the  
15 following:

16 “(4) ANALYSIS OF EFFECTS OF DETERMINATION.—

17 “(A) IN GENERAL.—The Secretary shall, con-  
18 currently with making a determination under para-  
19 graph (1) that a species is a threatened species or  
20 an endangered species, prepare an analysis with re-  
21 spect to such determination of—

22 “(i) the economic effect;

23 “(ii) the effects on national security; and

24 “(iii) any other relevant effect.

25 “(B) EFFECT.—Nothing in this paragraph  
26 shall delay a determination made by the Secretary

1 under paragraph (1) or change the criteria used by  
2 the Secretary to make such a determination.”.

3 **TITLE V—LIMITATION ON REA-**  
4 **SONABLE AND PRUDENT**  
5 **MEASURES**

6 **SECTION 501. LIMITATION ON REASONABLE AND PRUDENT**  
7 **MEASURES.**

8 Section 7(b)(4) of the Endangered Species Act of  
9 1973 (16 U.S.C. 1536(b)(4)) is amended by inserting  
10 “and that do not propose, recommend, or require the Fed-  
11 eral agency or the applicant concerned, if any, to mitigate  
12 or offset such impact” after “minimize such impact”.

○